

IN THE UNITED STATES
NORTHERN DISTRICT COURT OF CALIFORNIA

MICHAEL LYNN WATERS
PLAINTIFF

FILED

ORDER TO CAUSE
FOR A:

APR 15 2008

V.
PRELIMINARY.

INJUNCTION A TEMPORARY
RESTRAINING ORDER.

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

A.W. P.T. SMITH, CIO (A)
CCII-EDWARDS, CCII,
L.T. T. WOOD - FC (A)

RECEIVED 128 G. ON
4/9/08 - IN WHICH I
SHAWED TO C/O YOUNG ON
4/10/08: CONCLUDING THAT
CCII-EDWARDS HAS DONE
THIS BEFORE.

DUE TO THE ISSUE HERE BEING
THE VERY SAME AS CASE
NO: (C 07-4683 CRB (PR)
PLAINTIFF WISH TO PROCEED
IN FORMA PAUPERIS: AS
PLAINTIFF IS ABOUT TO BE PLACED
IN POPULATION ON FALSIFIED
DOCUMENTS ATTACHED: AS THE
STAFF ASSISTANCE: OFFICE - R,
YOUNG WOULD CONCLUDE THIS
128 G OF 3/26/08 IS FALSE.
THAT PLAINTIFF SAID HE DONT NEED
SAFETY/PROTECTION.

UPON THE COMPLAINT, THE SUPPORTING DECLARATION OF PLAINTIFF,
SEE (EXHIBIT-A) DATED: 3/26/08 - CIOCR-128 G., AND THE MEMORANDUM
OF LAW SUBMITTED HEREWITH, IT IS ORDERED THAT THE DEFENDANTS
(LISTED ABOVE SHOW CAUSE IN ROOM _____ OF THE UNITED
STATES COURTHOUSE: ADDRESS)

ON THE _____ DAY OF _____,
20____, AT _____ O'CLOCK, WHY A PRELIMINARY INJUNCTION SHOULD
NOT ISSUE PURSUANT TO RULE - 65 (A) OF THE FEDERAL RULES OF CIVIL
PROCEDURE ENJOINING THE DEFENDANTS, THEIR SUCCESSORS IN OFFICE, AGENTS
AND EMPLOYEES AND ALL OTHER PERSONS ACTING IN CONCERT AND _____

PARTICIPATION WITH THEM, FROM: (PLACING PLAINTIFF IN ANY PRISON POPULATION OR TRANSFER: AND) TO REMAIN IN PBSF ASLS-A-1-208, AND) PLACED UNDER INVESTIGATION TO BE INTERVIEW BY CCI- SWEARINGEN) SEE (EXHIBIT-B)

WHO WAS THE INVESTIGATOR OF THE (202) GRANTED) AND) SIGNED) BY DEFENDANT- DEPUTY WARDEN: F. JACQUEZ)

AS EXHIBIT-A) WOULD) GET PLAINTIFF (KILLED) ?

THESE DEFENDANTS FALSIIFIED DOCUMENTS HERE, PLAINTIFF WAS PLACED ON SINGLE CELL BY A.W. COOK)

P.T. SMITH STATED) THAT: HE WOULD) PLACE PLAINTIFF UNDER INVESTIGATION TO SPEAK WITH (CCI- SWEARINGEN) BEFORE GOING TO ANOTHER PRISON:

MEMORANDUM AND) DECLARATION
OF PLAINTIFF MICHAEL LYNN WATERS

I MICHAEL LYNN WATERS, HEREBY STATE THE FOLLOWING TO BE TRUE AND) CORRECT: I FURTHER STATE THAT (EXHIBIT-C) CLEARLY STATES: (THAT THE BLACK INMATES) WANT TO HURT PLAINTIFF FOR NOT FIGHTING WHITE INMATES: AS WELL AS IN (EXHIBIT-A) THAT: CCI EWARDS EXPLAINED) TO PLAINTIFF THE NATURE OF A CONFIDENTIAL DOCUMENT DATED) (07/19/07), AND) AS DISCLOSED) ON CDC 1030 DATED) 08/10/07:

PLAINTIFF FURTHER STATES HERE THAT: IT WOULD) BE IMPOSSIBLE FOR HIM TO BE PLACED) ON ANY MAIN-LINE WITH BLACK INMATES AGAIN: AS PLAINTIFF DID) GIVE CCI- MELTON INFORMATION WHO THE (2) BLACK INMATES WAS WHO JUMPED) INMATE JONES INSIDE (B-8): ON DEC 22, 2006). IN THE COURT'S OPINION IN (DAVIDSON V. O'LONE, 752 F. 2d 817 (3d. CIR. 1984) (DAVIDSON V. CANNON, 474 U.S. 344, 106 S. CT. 668, 88 L.ED. 677 (1986), WE CONSIDERED) THE CLAIM OF A PRISON INMATE WHO SUFFERED) A DEPRIVATION OF A LIBERTY INTEREST-

THROUGH AN ATTACK BY ANOTHER INMATE. WE STATED THAT LIABILITY MAY BE IMPOSED ON PRISON OFFICIALS, EVEN FOR ASSAULTS WHICH THEY DID NOT COMMIT, IF THERE WAS INTENTIONAL CONDUCT, DELIBERATE OR RECKLESS INDIFFERENCE TO THE PRISONER'S SAFETY, OR CALLOUS DISREGARD ON THE PART OF PRISON OFFICIALS, Id. AT 828) WE REAFFIRMED THAT WHERE PRISON OFFICIALS INFRINGED A LIBERTY INTEREST BY INTENTIONAL CONDUCT, GROSS NEGLIGENCE, OR RECKLESS INDIFFERENCE, OR AN ESTABLISHED STATE PROCEDURE, THE MATTER IS ACTIONABLE UNDER SECTION 1983.)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT: 4-9-08 Michael Lynn Walter
DATED

IT IS FURTHER ORDERED THAT EFFECTIVE IMMEDIATELY, AND PENDING THE HEARING AND DETERMINATION OF THIS ORDER TO SHOW CAUSE, THE DEFENDANTS, IN THE ABOVE ACTION AND OF THEIR OFFICERS, AGENTS, EMPLOYERS, AND ALL PERSONS ACTING IN CONCERT OR PARTICIPATION WITH THEM, ARE RESTRAINED FROM THE STATED ACTIONS IN PLAINTIFFS-
DECLARATION:

IT IS FURTHER ORDERED THAT THE ORDER TO SHOW CAUSE, AND ALL OTHER PAPERS ATTACHED TO THIS APPLICATION, BE SERVED ON THE AFORESAID PLAINTIFFS by

← DATED →

U.S. DISTRICT COURT JUDGE

DATE: _____

REASONS FOR DAMAGES HERE

PLAINTIFF CONTENTS THAT HIS STAFF ASSISTANCE WILL CONCLUDE TO YOUR HONOR THAT: PLAINTIFF BEGGED A.W. P.T. Smith TO PLACE HIM UNDER INVESTIGATION. PLAINTIFFS FIRST ISSUE IN HIS CIVIL ACTION IS FOR SAFETY AND PROTECTION, CCH- EDWARDS AND DEFENDANTS ARE TRYING TO COVER-UP FOR THE DEFENDANTS LISTED IN CASE NO: (C 07-4683 CRB (PR))

AND SHOULD PAY THE SUM OF (\$100,000) DOLLARS

1) PUNITIVE DAMAGES. A COURT MAY AWARD PUNITIVE DAMAGES "WHEN THE DEFENDANTS CONDUCT IS SHOWN TO BE MOTIVATED BY EVIL MOTIVE AND INTENT, OR WHEN IT INVOLVES RECKLESS OR CALLOUS INDIFFERENCE TO THE FEDERALLY PROTECTED RIGHTS OF OTHERS." (SMITH V. WADE, 461 U.S. 30, 56, 103 S. CT. 1625, 1640, 75 L. Ed. 2d 632 (1983).)

2) THE UNITED STATES SUPREME COURT HAS MADE CLEAR THAT AN INMATE SEEKING A REMEDY FOR UNSAFE CONDITIONS DOES NOT HAVE TO AWAIT A TRAGIC EVENT SUCH AS AN ACTUAL ASSAULT BEFORE OBTAINING RELIEF. THE PURPOSE IS TO KEEP INJURIES FROM OCCURRING IN THE FIRST PLACE.

RESPECTFULLY

4/10/08
DATED:

MICHAEL LYNN WATERS
PRINT- HERE

PROOF OF SERVICE

I MICHAEL LYNN WATERS, HEREBY CERTIFY THAT I AM OVER THE AGE OF (18) YEARS OF AGE - AND A PARTY TO THE WITHIN ACTION: ~~I SERVED~~ ON 4/10/08 - THE ATTACHED DOCUMENTS, ON THE LISTED PARTY(S) BELOW BY PLACING SAID DOCUMENTS IN THE U.S. MAIL HERE AT PELICAN BAY STATE PRISON - P.O. BOX 7500 - CRESCENT CITY, CALIFORNIA 95532:

JUDGE'S CLERK

U.S. NORTHERN DISTRICT COURT
FOR CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA
94102

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT:

4-10-08

DATE:

Michael Lynn Waters

SIGNATURE

EXHIBIT

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R

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDCR 128G (REVISED 4/07)

NO: P-16171 NAME: WATERS, MICHAEL HSG: AF1 208
 Custody: MAX PS 83 Level: IV WG/PG: D1/D EFF: 01/10/07 Assignment: ASU
 Rel Date: MEPD 03/29/2017 Reclass: TBD Action: RETAIN IN ASU DUE TO LOCAL ENEMY CONCERNS; REFER TO CSR RX TX
 BPH Rev: 0 COR-IV 270 OR ALTERNATE LAC-IV 270 NOTING CCCMS LOC

Comments: Inmate WATERS appeared before PBSP AD-SEG, ICC on this date for Subsequent Review. ICC notes the 114-D dated 3/21/08, wherein S was placed in ASU due to expressed safety concerns. Investigative Employee was not required. Witnesses were not requested per CCR, Title 15, Sections 3338(h) and (i). CCII D. Edwards explained to S the nature of a confidential document dated 07/19/07, and as disclosed on CDC 1030 dated 08/10/07, and its relevance to S's safety issues if returned to PBSP BMU. S admits that he can no longer remain at PBSP as the Black Inmate population considers him "no good". S fears he will be disciplined for his prior behavior, but is not requesting SNY placement. When asked if S could Double Cell, S stated that he could live with a compatible inmate.

Subject was issued a new 114D dated 3/21/08 as the subject has been in ASU for a period of one year. The current 114D retains S in ASU due to safety concerns if returned to the GP. This 114D is appropriate for ASU retention.

ICC notes S meets 270 housing. ICC notes that the Subject has had positive behavior during the last year. ICC acts to refer S's case to the CSR for transfer consideration to COR or LAC for 270° Level-IV housing. S was advised he would remain in ASU for his Safety pending transfer.

Staff Assistance: S was provided a Staff Assistant as he is a participant in the MHSDS. Correctional Officer, R. Young met with S, 24 hours prior to ICC and was present for today's ICC hearing. S was afforded a SA due to his MHSDS level of care at CCCMS.

Psychiatric concerns: LCSW, P. Clendenin was present during ICC. When S was asked about his mental health, S stated his mental health was "O.K." Committee notes the CDCR-128C dated 06/13/07 placing S at the CCCMS level of care. S meets PBSP-SHU exclusionary criteria.

DA action: N/A

Cell status: S is cleared for double celling, but has a propensity to refuse cellies or manipulates staff to get a single cell. ICC does not impose the S suffix.

Yard status: Placed on WA yard pending release from ASU.

Committee action: Retain in ASU at Max Custody and WG/PG of D1/D, due to local safety and enemy concerns. Refer to CSR for transfer consideration, recommending COR-IV, alternate LAC-IV as an alternate for 270° housing. Transfer is considered to be not adverse based on local enemy concerns. S will be eligible for CLO-B Custody and WG/PG of A2/B upon transfer.

Inmate comments: S expressed his understanding of the basis for the ICC action and disagreed with the action that he be doubled cell.

Appeal rights: S was advised of his right to appeal the aforementioned decisions, and submit the appeal within 15 days of today's action, whether or not he has received the 128G classification chrono, to preserve his appeal rights pursuant to time constraints.

CHAIRPERSON: P.T. SMITH, CDW(A)

RECORDER: D. EDWARDS/CCII

COMMITTEE MEMBERS: T. WOOD/FC(A)

P. CLENDENIN/PHD

C/O R. YOUNG/SA

DATE: 3/26/08

INSTITUTIONAL CLASSIFICATION COMMITTEE

Inst.: PBSP

EXHIBIT

11

11

B

INMATE/PAROLEE
APPEAL FORM

CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. PBSP

1. A06-00110

2/5

WPA's Small
Cell Status.

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification decisions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME MICHAEL J. WATERS	NUMBER P-1217	ASSIGNMENT NONE	UNIT/ROOM NUMBER A-6/218
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A. Describe Problem:

SEE ATTACHED PAGE 1 EXHIBIT
IT IS CLEARLY UNDERSTANDABLE THAT I WILL DESCRIBE MY PROBLEM IN THIS SECTION, BUT ANYWAY,
I HAVEN'T RECEIVED A COPY OF THE (SINGLE-CELL CHIEFMAN) OF (10/13/05) THE SINGLE CELL STATUS THAT I'M IN NOW WAS BY THE (ICC-CAPTAIN) TO SEE THE FACTORS/INTT - FOR FURTHER SINGLE-CELL, IN WHICH I SENT THE FACTORS TODAY 12/7/05 - RUBEN + BUTLER > WHO STATED THAT THEY HAD INTT AN ME, WITH ME, THERE, BUT THERE IS NO RECORD OF IT, BUTLER STATED THE ONLY RECORDS HE HAS IS (FEB-04-05.)
SEE ATTACHED PAGE 1 < PLEASE THANK YOU >

If you need more space, attach one additional sheet.

B. Action Requested:

I HAVE COUNSEL/WATERS TO BACK OFF ME WITH HIS RECKLESS WAYS, AND BECAUSE OF ME BEING IN SINGLE-CELL NOW BY THE (CAPTAIN) THAT I SPEAK WITH (LIEUTENANT - P.I. TERRY) AND (NORRIS RUBEN) ONLY, PLEASE ALLOW THE (LIEUTENANT) TO MAKE THE SINGLE-CELL-CALL?

Inmate/Parolee Signature:

MICHAEL J. WATERS

Date Submitted:

11/10/05

C. INFORMAL LEVEL (Date Received: _____)

Staff Response:

THEY FORCED ME TO LIVE WITH SOMEONE OUT OF EVILNESS, THEY RECORDS WILL PROVE MY POINTS.

Staff Signature:

MICHAEL WATERS

Date Returned to Inmate:

11/13/06

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Information, CDC 122, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature:

Date Submitted:

Note: Property/Funds appeals must be accompanied by a completed

CDC Appeal Number:

Board of Control form BC-11E, Inmate Claim

NOV 15 2005
10
9
2005

1ST AWGP
JAN 13 2008

10/16/06
34

(14)

EXHIBIT

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C

A1-208

STATE OF CALIFORNIA  
CDC 1030 (12/86)

DEPARTMENT OF CORRECTIONS

## CONFIDENTIAL INFORMATION DISCLOSURE FORM

INMATE NUMBER: P16171INMATE NAME: Waters, M.

## 1) Use of Confidential Information.

Information received from a confidential source(s) has been considered in the:

a) CDC-115, Disciplinary Report dated \_\_\_\_\_ submitted by \_\_\_\_\_

STAFF NAME, TITLE

b) CDC-114-D, Order and Hearing for Placement in Segregated Housing dated \_\_\_\_\_

## 2) Reliability of Source.

The identity of the source(s) cannot be disclosed without endangering the source(s) or the security of the institution.

This information is considered reliable because:

- a) ☐ This source has previously provided confidential information which has proven to be true.
- b) ☐ This source participated in and successfully completed a Polygraph examination.
- c) ☒ More than one source independently provided the same information.
- d) ☐ This source incriminated himself/herself in a criminal activity at the time of providing the information.
- e) ☒ Part of the information provided by the source(s) has already proven to be true.
- f) ☐ Other (EXPLAIN) \_\_\_\_\_

## 3) Disclosure of information received.

The information received indicated the following: \_\_\_\_\_

That the word was being spread to all of the Blacks  
through the institution, the he (you) and (Redacted) had refused  
(hard-down) and did not help a Black inmate jumped by two  
White inmates, and they (you) needed to get off the yard

(If additional space needed, attach another sheet.)

- 4) Type and current location of documentation, (for example: CDC-128-B of 5-15-86 in the confidential material folder). Confidential Memo dated 7-19-07 authored by CCI

D. Molton

STAFF SIGNATURE, TITLE

8-9-07

DATE DISCLOSED

DISTRIBUTION: WHITE -- Central File; YELLOW - Inmate; PINK -- Institution Use

(6)

MICHAEL LYNN WATERS  
#P-16171 A-1-208  
PELICAN BAY STATE PRISON  
P.O. BOX 7500  
CRESCENT CITY, CALIFORNIA  
95532

"(LEGAL MAIL)  
EMERGENCY

PELICAN BAY STATE PRISON  
5905 Lake Earl Dr  
Crescent City CA 95532



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0004217666 APR 11 2008  
MAILED FROM ZIP CODE 95531

TO, THE HONORABLE JUDGE,

CHARLES R. BREYER  
UNITED STATES NORTHERN  
DISTRICT COURT OF CALIFORNIA  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA  
94102

